

RECEIVED
FEDERAL ELECTION
COMMISSION

2009 JUN 18 PM 2:45

CELA

FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6127

DATE COMPLAINT FILED: November 4, 2008

DATE OF NOTIFICATION: November 10, 2008

DATE OF LAST RESPONSE: December 24, 2008

DATE ACTIVATED: February 17, 2009

EXPIRATION OF STATUTE OF LIMITATIONS:

November 1, 2012 through November 4, 2013

COMPLAINANT:

California Republican Party

RESPONDENTS:

Obama for America and Martin Nesbitt, in his
official capacity as Treasurer

Barack Obama

Obama Victory Fund and Andrew Tobias, in his
official capacity as Treasurer

Democratic National Committee and Andrew
Tobias, in his official capacity as Treasurer

VIDA Fitness

David von Storch

Saul Ewing, LLP

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 434(b)

2 U.S.C. § 439a(b)

2 U.S.C. § 441a(a)

2 U.S.C. § 441a(f)

2 U.S.C. § 441b(a)

11 C.F.R. § 104.3

11 C.F.R. § 106.3(b)

11 C.F.R. § 110.1(b)

11 C.F.R. § 113.1(g)

11 C.F.R. § 114.2(b), (d)

11 C.F.R. § 114.2(f)

INTERNAL REPORTS CHECKED:

Disclosure reports

FEDERAL AGENCIES CHECKED:

None

10044261330

1 **I. INTRODUCTION**

2 **The Complaint in this matter makes several allegations that Respondents violated**
3 **provisions of the Federal Election Campaign Act, as amended ("Act"). First, the Complaint**
4 **alleges that Obama for America and Martin H. Nesbitt, in his official capacity as Treasurer,**
5 **("OFA") converted campaign funds to President Barack Obama's personal use by paying his**
6 **personal travel expenses during the 2008 presidential election in violation of 2 U.S.C. § 439a(b).**
7 **Specifically, the Complaint claims that OFA and President Obama violated the Act's prohibition**
8 **on personal use of campaign contributions when OFA used campaign contributions to pay for the**
9 **President's trip to Hawaii to visit his sick grandmother on October 23 and 24, 2008.**

10 **Second, the Complaint alleges that VIDA Fitness ("VIDA"), a health club based in**
11 **Washington, D.C., violated 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 114.2(b), (d) and (f) by**
12 **facilitating the making of contributions and making prohibited contributions to the Obama**
13 **Victory Fund ("OVF"), a joint fundraising committee comprised of OFA and the Democratic**
14 **National Committee ("DNC"). The Complaint claims that VIDA facilitated the making of**
15 **contributions by using a corporate email list to distribute OVF fundraising solicitations and**
16 **allowing OVF to use VIDA's facilities for a fundraiser. Because VIDA allegedly never charged**
17 **OVF for the use of the email list or the use of the space, the Complaint argues that VIDA made,**
18 **and OVF knowingly accepted, prohibited corporate contributions.**

19 **Third, the Complaint alleges that OFA failed to disclose a transfer of a donor list to**
20 **Project Vote, an affiliate of the non-profit community organization, ACORN, in violation of 2**
21 **U.S.C. § 434(b) and 11 C.F.R. § 104.3. Fourth, the Complaint alleges that OFA intended to**
22 **accept, and Saul Ewing LLP intended to make, an excessive contribution in the form of pro bono**
23 **legal services provided by Saul Ewing lawyers to OFA in violation of 2 U.S.C. § 441a.**

10044261331

1 Based on the discussion below, we recommend that the Commission: 1) dismiss the
2 allegation that OFA and President Obama violated 2 U.S.C. § 439a(b) by converting campaign
3 funds for President Obama's personal use and send a cautionary letter; 2) find reason to believe
4 that VIDA and David von Storch, President of VIDA, violated 2 U.S.C. § 441b(a) and 11 C.F.R.
5 § 114.2 by soliciting outside of the restricted class and facilitating the making of contributions;
6 3) dismiss the allegation that OVF, OFA, and the DNC violated 2 U.S.C. § 441b(a) by
7 knowingly accepting a prohibited contribution; 4) find no reason to believe OFA violated 2
8 U.S.C. § 434(b) and 11 C.F.R. § 104.3 by failing to report an alleged transfer of a donor list; and
9 5) find no reason to believe that OFA knowingly accepted, or Saul Ewing made, an excessive
10 contribution in violation of 2 U.S.C. § 441a. In addition, we recommend that the Commission

11 _____
12 _____ | close the file as to the remaining respondents.

13 **II. FACTUAL AND LEGAL ANALYSIS**

14 **A. Alleged Conversion of Campaign Funds to Personal Use**

15 **1. Facts**

16 OFA was the principal campaign committee for President Barack Obama during the 2008
17 election for U.S. President. On or about October 21, 2008, President Obama's campaign
18 reportedly announced that the President would suspend his campaign to visit his ailing
19 grandmother in Hawaii.¹ According to the Response submitted by OFA, on October 23 and 24,
20 2008, President Obama traveled to Hawaii on his campaign plane, and "the purpose of the trip
21 was to visit his dying grandmother." OFA Response at 2. The Response, however, notes that
22 because the trip occurred two weeks before the general election, the President had no choice but

¹ See Scott Hellman, *Obama Suspends Campaign to Visit Ailing Grandmother in Hawaii*, THE BOSTON GLOBE, Oct. 21, 2008; Michael Powell, *Obama Briefly Leaving Trail to See Ill Grandmother*, THE NEW YORK TIMES, Oct. 21, 2008.

1 to travel on an aircraft "equipped with the space and capacity to address security and working
2 requirements." *Id.* In fact, the Secret Service required the President to use the campaign plane.
3 *Id.* In addition, the Response states that campaign aides traveled with the President to Hawaii,
4 and he participated in numerous campaign-related phone calls and meetings while in Hawaii.
5 The Response further notes that the "trip was reported on extensively by the national media." *Id.*

6 The Complaint estimates that OFA may have paid over \$100,000 to fly the President on
7 the campaign plane without obtaining reimbursement from the President. Complaint at 4 (*citing*
8 T.W. Farnam, *Campaigns Take Different Stances on Using Private Jets*, WALL ST. J., Oct 29,
9 2008). The Response does not indicate what the airfare to and from Hawaii actually cost, and we
10 have not been able to obtain any such information through publicly available sources.²

11 2. Legal Analysis

12 Under 2 U.S.C. § 439a(b)(1), a contribution cannot be converted to personal use by any
13 person. *Id.* Such conversion occurs "if the contribution or amount is used to fulfill any
14 commitment, obligation, or expense of a person that would exist irrespective of the candidate's
15 election campaign or individual's duties as a holder of Federal office." 2 U.S.C. § 439a(b)(2);
16 *see also* 11 C.F.R. § 113.1(g). In other words, "expenses that would be incurred even if the
17 candidate was not a candidate or officeholder are treated as personal rather than campaign or
18 officeholder related." *Final Rule and Explanation and Justification, Personal Use of Campaign*
19 *Funds*, 60 Fed. Reg. 7861, 7863 (Feb. 9, 1995) (hereinafter "1995 Personal Use E&J").³

² The article cited in the Complaint estimates that a flight to Hawaii on the Obama campaign charter plan, a Boeing 757, would likely cost about \$10,000 per flight hour, and assuming that the flight was 10 hours in duration, OFA probably paid at least \$100,000 for the trip. OFA reported a payment of \$180,101.25 to Executive Jet Management on October 31, 2008, on its 2008 Post-General Report. However, we do not know if this disbursement covered the President's trip to Hawaii. Even if this disbursement did include the trip, the disbursement likely included other air travel besides the flight to and from Hawaii.

³ In the Bipartisan Campaign Reform Act of 2002, Congress codified the "irrespective" test for personal use set forth in 11 C.F.R. § 113.1(g)(1) by amending the pre-BCRA version of 2 U.S.C. § 439a(b). *See Final Rule and*

1 The Response claims that OFA's use of campaign funds to pay for the trip was not a
2 violation of section 439a. The Response contends that the expenses for the Hawaii trip "would
3 not have been incurred irrespective of President-Elect Obama's candidacy." Response at 2.
4 While the Response admits that the purpose of the trip was to visit his dying grandmother, it
5 maintains that security concerns and working requirements rendered it "impossible" for the
6 President not to fly on the campaign plane. *Id.* Furthermore, the Response argues that during the
7 trip, the President engaged in campaign activities that were more than incidental, and thus the
8 expense of this travel should be considered a campaign expense under 11 C.F.R. § 106.3(b)(3),
9 which requires that a candidate report travel expenditures where the candidate conducts any non-
10 incidental, campaign related activity in a travel stop.

11 In cases where travel involves both personal and campaign-related activities, 11 C.F.R.
12 § 113.1(g)(1)(ii)(C) provides that "the incremental expenses that result from personal activities
13 are personal use, unless the person(s) benefiting from this use reimburse(s) the campaign account
14 within thirty days for the amount of the incremental expenses." *Id.*; see also 11 C.F.R.
15 § 113.1(g)(1)(ii)(D) (requiring candidate to reimburse campaign account within 30 days where
16 vehicle is used for both personal and campaign-related activities, unless personal activities are a
17 *de minimis* amount); 1995 Personal Use E&J at 7869 (stating if committee uses campaign funds
18 to pay for mixed travel expenses, the candidate or officeholder is required to reimburse
19 committee for incremental expenses that resulted from personal activities); MUR 5218 (Russ
20 Francis), First General Counsel's Report at 7-8 (stating that candidate should have reimbursed
21 committee where some travel expenses paid by committee appeared to be for personal use).
22 While the Commission has required candidates or office holders to reimburse incremental travel

Explanation and Justification, Personal Use of Campaign Funds, 67 Fed. Reg. 76962, 76970 (Dec. 13, 2002). The Commission therefore announced that it would therefore not revise the "irrespective" test. *Id.*

1 expenses that are personal, (i.e., additional expenses attributable to personal use in a mixed travel
2 context), the Commission historically has considered airfare as a defined expense that is not
3 apportioned as both a personal and campaign expense and thus applied the irrespective test to
4 determine whether personal or campaign funds should be used to pay for the airfare. *See* AO
5 2002-05 (Hutchinson) (citing 1995 Personal Use E&J at 7869).

6 Based upon the parties' submissions, it appears that the trip to Hawaii, but not the use of
7 the campaign plane, would have occurred irrespective of Obama's campaign and thus constitutes
8 personal use under 2 U.S.C. § 439a(b)(2) and 11 C.F.R. § 113.1(g)(1)(ii)(C). OFA concedes that
9 the purpose of the Hawaii trip was to visit Obama's dying grandmother, not for a campaign-
10 related event. While the Response cites the extensive national media coverage of the trip to
11 support this conclusion, the coverage actually focused on how the President had suspended his
12 campaign to visit her, not on any campaign events that he was scheduled to attend.⁴ While OFA
13 claims that the President also engaged in some non-incident campaign activity, the air travel
14 itself appears to have been a defined expense that would have existed irrespective of the
15 campaign activity.⁵ Thus, it appears that President Obama should have reimbursed his campaign
16 for the airfare for the trip to Hawaii under § 439a(b).

17 The Response relies on 11 C.F.R. § 106.3, which concerns the allocation of expenses for
18 campaign and non-campaign related travel, in support of its assertion that OFA's use of
19 campaign funds for the trip to Hawaii was permissible. Section 106.3(b)(3) provides that where

⁴ *See, e.g.,* Helman, *supra* note 1 (reporting that Barack Obama would suspend campaigning for 24 hours to visit ailing grandmother).

⁵ In the 1995 Personal Use E&J, the Commission cited an example where a member of Congress takes a trip to Florida to make a speech in his or her official capacity and then decides to stay an extra week to enjoy a vacation. *See id.* at 7869. While the member would be required to reimburse the incremental expenses that were for the vacation, the member would not have to pay any incremental portion of the airfare given that the airfare expense would have been incurred even if the member had not extended the trip for vacation purposes. *Id.*; *see also* AO 2002-05 (Hutchinson). Because we have the opposite situation in this matter, where the trip would have occurred irrespective of any campaign activity, the candidate would have to pay for the airfare.

10044261335

1 campaign activity is more than incidental in a stop, that entire stop will be treated as a campaign-
2 related stop and all travel expenditures must be reported. *Id.* However, the statutory prohibition
3 against personal use in 2 U.S.C. § 439a(b) and the definition of personal use in 11 C.F.R.
4 § 113.1(g), which apply the "irrespective test," trumps the less restrictive standard in section
5 106.3. If we were to apply section 106.3 in all cases involving mixed travel, then so long as a
6 candidate engages in some non-incidental campaign activity in a particular stop, the committee
7 could report all expenses for the stop as campaign-related without ever having to consider the
8 application of 2 U.S.C. § 439a(b), ultimately rendering that statutory provision a nullity in the
9 travel context.

10 This conclusion is consistent with the Commission's approach in AO 2002-05
11 (Hutchinson). In this opinion, the Commission considered the interplay of the personal use
12 provisions and section 106.3 where a City Mayor traveled to Washington, D.C. to conduct city
13 business but also conducted some federal campaign activity on the side and took some time for
14 personal travel. Because the Mayor spent two out of eight days on federal campaign activity, the
15 Commission concluded that the federal activity was more than incidental. Rather than treating
16 the whole trip as a campaign-related expense under section 106.3(b), however, the Commission
17 stated that the Mayor must apply the incremental approach under section 113.1(g) and ensure
18 that her federal committee paid for the campaign-related portion of the trip. With respect to the
19 airfare, the Commission stated that because "the airfare represents a defined expense that would
20 have existed irrespective of any personal or campaign related activities, the entire cost of the
21 ticket may be paid for by the City, with no obligation by Ms. Hutchinson or her campaign
22 committee to reimburse the City." AO 2002-05 at 5.

1 In applying section 113.1(g) to the activity at issue, the Commission stated that
2 section 106.3 predates the 1995 rulemaking on personal use regulations at Part 113 and "reflects
3 a policy which was also less restrictive regarding the personal use of campaign funds." *Id.* at 4.
4 "Therefore, when applying 11 C.F.R. § 106.3(b)(3), the Commission's more recent policy
5 concerns and interpretations regarding the personal use prohibition must be given greater
6 significance." *Id.* In fact, the Commission declared that past advisory opinions, including AO
7 1992-34 and 1994-37, which applied section 106.3(b)(3) and were inconsistent with the approach
8 in section 113.1(g)(1)(ii)(C), were superseded. *Id.*

9 In this matter, applying section 106.3(b)(3) to transform a trip, which was for the
10 undisputed purpose of meeting a personal obligation, into a campaign-related trip because the
11 candidate conducted some meetings and phone calls would undermine the statutory prohibition
12 against personal use established by Congress. While the prohibition on personal use recognizes
13 that candidates have wide discretion over the use of campaign funds, candidates must reasonably
14 show that the expenses at issue resulted from campaign activities. *See* 1995 Personal Use E&J at
15 7867. OFA does not state whether President Obama was scheduled to appear for any events that
16 were specifically scheduled in Hawaii, nor does it contend that the campaign activity, which
17 included conducting some meetings and making phone calls, was required to be conducted in
18 Hawaii or was otherwise related to his trip to Hawaii. Indeed, OFA's Response appears to
19 conflict with what OFA reportedly communicated to the public in October 2008 by stating that
20 President Obama had suspended his campaign to visit his grandmother.⁶

21 While it appears that President Obama should have reimbursed the campaign for the
22 flight, reimbursement for the approximate charter rate does not appear appropriate given that the

⁶ *See supra* p. 3 and note 1.

1 Secret Service required the President to use the campaign plane for security reasons.⁷ Instead, a
2 commercial first class rate would have applied had the President not been a Presidential
3 candidate at the time. When obtaining pricing information for a hypothetical flight from
4 Indianapolis, Indiana to Honolulu, Hawaii, we found prices ranging from \$1,248-\$1,338.⁸
5 Accordingly, it appears that President Obama would have had to reimburse the campaign with
6 funds in this range.

7 Given the small amount at issue, however, we do not believe that it would be a prudent
8 use of the Commission's limited resources to pursue this matter further.

9
10
11 Furthermore, this case
12 appears to present unique circumstances, as President Obama was the first Presidential candidate
13 to forego public financing in the general election, and most federal candidates are not required to
14 travel with the Secret Service and a large press corps and to use a private charter equipped to
15 address certain work and security requirements.⁹ Based upon the small amount in violation and
16 the relatively novel facts and issues presented in this matter, we recommend that the Commission

⁷ In the Honest Leadership and Open Government Act of 2007 ("HLOGA"), Congress amended 2 U.S.C. § 439a to require that federal candidates pay the fair market value of a flight based upon "the normal and usual charter fare or rental charge for a comparable plane . . ." when making an expenditure for a flight on an aircraft. See 2 U.S.C. § 439a(c)(1). Because it appears that President Obama's use of the campaign plane constituted personal use and not an expenditure, reimbursement based on a charter rate would not apply in this case.

⁸ According to press reports, President Obama was leaving for Honolulu after a campaign event in Indianapolis on Thursday, October 24, 2008. See Helman, *supra* note 1. Thus, based on this information, we used a common on-line travel website to determine what a hypothetical first class, commercial rate would be from Indianapolis to Honolulu on a Thursday within the same week. See Travelocity Search Results, Attachment A. We only researched a one way ticket because the flight departing Honolulu to where President Obama would resume his campaigning would be considered a campaign stop and campaign funds would be used for that particular trip. See 1995 Personal Use E&J at 7869.

⁹ If President Obama had accepted public financing, then the airfare would have qualified as a campaign expense. See 11 C.F.R. § 9034.7(b)(2) (under Title 26, travel by publicly financed Presidential candidates involving more than incidental campaign activity is campaign-related and a qualified campaign expense).

10044261338

1 exercise its prosecutorial discretion and dismiss the allegation that OFA and President Obama
2 violated 2 U.S.C. § 439a(b) and send a cautionary letter that would advise the respondents of
3 their apparent violation of section 439a(b). *See Heckler v. Chaney*, 470 U.S. 821 (1985).

4 **B. Alleged Facilitation and Making of Prohibited Contributions**

5 1. **Facts**

6 VIDA, a Subchapter S corporation, is a fitness club with three locations in Washington,
7 D.C.¹⁰ Response of VIDA Fitness ("VIDA Response"), Declaration of David von Storch ("von
8 Storch Dec.") at ¶ 1. David von Storch is VIDA's sole shareholder and has been an active
9 member of the Democratic Party. von Storch Dec. at ¶¶ 1-2. According to the VIDA Response,
10 in mid-September 2008, Mr. von Storch and Tom Petrillo, a fundraiser for the DNC, spoke about
11 holding a fundraising event on September 26, 2008 to benefit OVF. *Id.* at ¶ 3. Mr. von Storch
12 told Mr. Petrillo about empty space at VIDA's newest location, and they agreed to hold the event
13 at this location. *Id.* The VIDA Response and the Response of DNC and OVF ("DNC/OVF
14 Response") indicate that Mr. Petrillo informed Mr. von Storch that OVF would have to be
15 invoiced for the rental of the space as well as any food or beverages served at the event. *Id.*;
16 DNC/OVF Response, Declaration of Thomas Petrillo ("Petrillo Dec.") at ¶ 4.

17 Prior to September 19, 2008, Mr. Petrillo emailed Mr. von Storch an invitation to the
18 fundraiser. *See* OVF Invitation, attached as Exhibit A to DNC/OVF Response; von Storch Dec.
19 at ¶ 7. Mr. Petrillo also emailed this invitation to approximately 500 donors in the D.C.
20 metropolitan area. Petrillo Dec. at ¶ 5. According to Mr. von Storch, he revised the invitation,
21 without Mr. Petrillo's knowledge or approval, adding a special disclaimer stating, "VIDA and

¹⁰ *See* VIDA Fitness website, www.vidafitness.com.

10044261339

1 Bang¹¹ do not endorse nor support any political candidate, but do encourage their members and
2 friends to get involved and participate in the electoral process.” See VIDA Invitation, attached
3 as Exhibit B of VIDA Response; von Storch Dec. at ¶ 7. On his own accord and without the
4 knowledge or approval of Mr. Petrillo, Mr. von Storch then emailed this invitation to
5 approximately 20,000 individuals who were on a list, prepared by Mr. von Storch, of customers
6 and friends of VIDA and Bang. von Storch Dec. at ¶¶ 9, 10; Petrillo Dec. at ¶¶ 7-8. Mr. von
7 Storch states that he subsequently paid Vida \$3,000 as a “personal in-kind contribution” to the
8 OVF for the use and rental of the email list, calculated as “\$150[0].00 [sic] per 10,000 names.”
9 von Storch Dec. at ¶ 10. The Commission’s disclosure database indicates that Mr. von Storch
10 made a \$3,000 contribution to OVF on December 4, 2008.¹²

11 On September 26, the day of the fundraiser, OVF brought in, at its own expense, the
12 equipment and volunteers to manage the event and guests, von Storch Dec. at ¶ 11, but it had not
13 received an invoice from VIDA for the use of the space and beverages. According to press
14 reports, more than 400 attended this event and tickets were “almost sold out” at \$250 to \$2,500.¹³
15 In addition, there were a limited number of tickets available at \$100. See VIDA Invitation.
16 Given that the gym was to open on the following Monday, von Storch reportedly promoted this

¹¹ Bang refers to Bang Salon and Spa, which is a salon owned by Mr. von Storch. Bang is a respondent in MUR 6110, which, in part, involves substantially similar allegations.

¹² Although the contribution limit for individuals to a candidate committee during the 2008 election cycle was \$2,300, individuals could give a maximum contribution of \$28,500 to national party committees. See 2 U.S.C. § 441a(a). Because OVF was a joint fundraising committee in which OVF and the DNC were participants, an individual could make a contribution up to \$30,800. See 11 C.F.R. § 102.17(c)(5) (providing that a contributor could make a contribution to the joint fundraising effort in an amount that represents the total of the allowable contribution limits for all participants).

¹³ Ann Schroeder Mullins, *Sarah Jessica Parker in Town Tonight for Obama*, POLITICO, Sept. 26, 2008, http://www.politico.com/blogs/anneschroeder/0908/Sarah_Jessica_in_town_tonight...

10044261340

1 event a "sneak peak" into the new location.¹⁴ At this time, we do not have information as to how
2 much was raised or how much of the amount raised resulted from Mr. von Storch's invitations.

3 After the event, Mr. Petrillo claims that he asked Mr. von Storch for an invoice but did
4 not receive one immediately. Petrillo Dec. at ¶ 9. According to Mr. von Storch, because the
5 main celebrity attraction cancelled her appearance at the last minute, "[f]rustration and confusion
6 reigned, and invoicing for the rental space and beverages got lost in the shuffle." von Storch
7 Dec. at ¶ 11. Furthermore, Mr. von Storch became occupied with the grand opening of the new
8 VIDA location and did not realize that he forgot to submit the invoice to Mr. Petrillo. von Storch
9 Dec. at ¶ 12. Mr. Petrillo also was deployed to Ohio to conduct campaign work and did not
10 realize that he had not yet received an invoice. Petrillo Dec. at ¶ 12. When Mr. Petrillo learned
11 of the Complaint in this matter, he again asked Mr. von Storch for the invoice. Petrillo Dec. at ¶
12 11.

13 On December 4, 2008, Mr. Petrillo received an invoice, dated November 26, 2008, from
14 Mr. von Storch for \$2,725.00. Petrillo Dec. at ¶ 12; VIDA invoice, attached as Exhibit C to
15 VIDA Response. Mr. von Storch stated that he charged \$2,500 for the space rental based upon
16 what he estimated a hotel would charge for the same amount of space used, given that the space
17 was new, and "there was no history of customary use, or usual and normal rental charge for, the
18 venue." VIDA Response at 4. In addition, Mr. von Storch charged \$225 for beverages that were
19 served at the event. von Storch Dec. at ¶ 12. OVF subsequently paid the invoice. See Check
20 No. 5560, attached as Exhibit D to VIDA Response.

21 On March 27, 2009, we sent a pre-RTB clarification letter requesting information on how
22 Mr. von Storch actually estimated what a hotel would charge and how he determined the prices

¹⁴ *Id.*; see also, Victor Maldonado, *Sarah Jessica Parker to Headline Obama Fundraiser in Washington*, Sept. 22, 2008, <http://www.pamshouseblend.com/showDiary.do?diaryId=7130&view=print> (stating that the event would also celebrate the opening of VIDA's Metropole location).

10044261341

1 of the beverages. In response, Mr. von Storch explained that since there was no customary usage
2 established for the new location of VIDA and he had no experience estimating the fair market
3 value of renting the space, "he estimated an amount that he thought would be a reasonable fair
4 market value" April 6, 2009 Letter from Katherine R. Boyce Esq., Attachment B. He then
5 discussed the price with the event organizer of the DNC and "was told that, based on the DNC's
6 extensive experience with costs of hotel venue rentals with beverages included (only sodas and
7 beer from one keg were served), the price quoted in the invoice seemed reasonable." *Id.*

8 2. Legal Analysis

9 A corporation is prohibited from making a contribution in connection with a federal
10 election under the Act. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b). In addition, neither a
11 federal candidate nor a political committee may knowingly accept a contribution from a
12 corporation. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(d). The Commission's regulations
13 further provide that a corporation may not facilitate the making of a contribution by using its
14 corporate resources to engage in fundraising activities for any federal election. *See* 11 C.F.R.
15 § 114.2(f)(1). The regulations provide examples of conduct that constitute corporate facilitation,
16 including the use of a corporate customer list, to send invitations to individuals not within the
17 restricted class to fundraisers without advance payment; the use of meeting rooms that are not
18 customarily available to civic or community organizations; and the provision of catering or other
19 food services without advance payment. *See* 11 C.F.R. § 114.2(f)(2).

20 a. *Use of VIDA's Customer List*

21 Corporations such as VIDA, which do not have separate segregated funds, are permitted
22 to solicit contributions to be sent directly to candidates, but those solicitations are limited solely
23 to its restricted class, consisting of its stockholders and executive or administrative personnel,

10044261342

1 and their families. 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. §§ 114.1(j) and 114.2(f). Moreover,
2 corporate facilitation may result if the corporation uses its list of customers, who are not within
3 the restricted class, to solicit contributions or distribute invitations to fundraisers without
4 advance payment for the fair market value of the list. See 11 C.F.R. § 114.2(f)(2)(i)(C).

5 Thus, when Mr. von Storch, the President of VIDA, emailed a list of 20,000 VIDA
6 customers and friends to distribute the September 26 fundraiser invitation without making an
7 advance payment, VIDA solicited outside of its restricted class and facilitated the making of
8 contributions to OVF. While Mr. von Storch reimbursed VIDA after the complaint was filed,
9 such reimbursement may mitigate but not vitiate a violation. Accordingly, we recommend that
10 the Commission find reason to believe that VIDA violated 2 U.S.C. § 441b(a) and 11 C.F.R.
11 § 114.2(f).

12 *b. Space Rental*

13 Corporate facilitation includes "using meeting rooms that are not customarily available to
14 clubs, civic or community organizations or other groups." 11 C.F.R. § 114.2(f)(2)(i)(D). For
15 example, facilitation would occur if a corporation makes its meeting room available for a
16 candidate's fundraiser, but not for community or civic groups. See *Explanation and*
17 *Justification, Facilitating the Making of Contributions*, 60 Fed. Reg. 64259, 64264 (Dec. 14,
18 1995). The permissibility of using such rooms when a corporation receives payment is governed
19 by 11 C.F.R. § 114.9(a), (b), or (d). *Id.* Section 114.9(d), which pertains to "use or rental" of
20 corporate facilities, provides that persons may make use of corporate facilities in connection with
21 a federal election so long as they reimburse the corporation "within a commercially reasonable
22 time in the amount of the normal and usual rental charge." *Id.*

1 In this matter, despite the purported agreement between Mr. von Storch and Mr. Petrillo,
2 VIDA failed to provide an invoice to the DNC until after the filing of the Complaint and 61 days
3 after the fundraising event. In a recent matter, MUR 5998 (John McCain for President), the
4 Commission determined that it was commercially reasonable for a vendor to invoice a committee
5 45 days after a campaign event and 6 days after the complaint had been filed, given that the
6 delay was relatively short and was due to a tax concern that was under review by the vendor.
7 Furthermore, the Commission has determined billing a committee approximately 90 days from
8 the event is commercially reasonable. *See, e.g.*, MUR 6034 (Worth & Company, Inc.). While
9 the reason for the delay in this matter appears to have been an oversight by the parties, it appears
10 that VIDA obtained payment for the space within a commercially reasonable time, given that
11 VIDA billed OVF within 61 days of the event and received payment shortly thereafter.

12 With respect to the amount paid for the space rental, VIDA indicates that because the
13 space was brand new with no history of customary use, Mr. von Storch charged \$2,500 based
14 upon what he thought would be a reasonable fair market value of the space rental, although he
15 had no experience estimating what a fair market value would be. *See* von Storch Dec. at ¶ 12.
16 Mr. von Storch then consulted Mr. Petrillo, who agreed that the price was reasonable. *Id.* While
17 the respondents claim that the price for the space rental was reasonable, respondents have not
18 provided any supporting information as to how they determined that the price charged was
19 commensurate with what a hotel would typically charge. *See id.*; April 6, 2009 Letter,
20 Attachment B. For example, they do not state whether they actually compared prices of specific
21 hotels in the area, only that Mr. von Storch, in consultation with the DNC, charged what he
22 “thought” would be a fair market value. Although we do not have any specific information as to
23 whether \$2,500 for the space rental was reasonable and are solely relying on respondent’s

1 representations, we do not believe that the Commission should use its limited resources to further
2 pursue this allegation, given that no information has been presented indicating that the \$2,500
3 was not the "normal and usual rental charge" for the space under 11 C.F.R. § 114.9(d). Thus, we
4 do not believe that the information provided by VIDA provides a sufficient additional basis for
5 our recommendation, *see supra* p. 14, that the Commission find reason to believe that VIDA
6 violated 2 U.S.C. § 441b and 11 C.F.R. § 114.2(f).

7 *c. Beverages*

8 Under 11 C.F.R. § 114.2(f)(2)(i)(E), corporate facilitation includes "providing catering or
9 other food services operated or obtained by the corporation or labor organization, unless the
10 corporation or labor organization receives advance payment for the fair market value of the
11 services." Because VIDA did not receive advance payment for the beverages, VIDA appears to
12 have facilitated the making of a contribution. Accordingly, we recommend that the Commission
13 find reason to believe that VIDA Fitness and David von Storch violated 2 U.S.C. § 441b(a) and
14 11 C.F.R. § 114.2(f)(2) by facilitating the making of contribution based on VIDA's failure to
15 obtain advance payment for the beverages

16
17
18 We do not recommend, however, that the Commission authorize an investigation to
19 determine whether \$225 was a fair market value for the beverages. Although \$225 does appear
20 to be a low cost for beverages to be served for approximately 400 people, VIDA has indicated
21 that it only served one keg of beer and soda, and we are uncertain as to whether the dollar
22 amount would increase substantially through an investigation. Furthermore, Commission
23 regulations allow a vendor to discount the sale of food or beverages so long as the vendor sells

10044261345

1 the items at cost or at a discount that does not exceed \$1,000. *See* 11 C.F.R. § 100.78. Based
2 upon this information, we do not believe that the Commission should use its limited resources to
3 investigate the valuation of the beverages.

4 *d. OVF*

5 In their Responses, the joint fundraising participants of OVF, the DNC and OFA largely
6 reiterate the facts and arguments presented in the VIDA Response. Both the DNC and OFA state
7 that Mr. von Storch acted on his own without consultation or knowledge from the DNC or OFA
8 when he mailed the OVF invitation to the VIDA customer list. *See* OFA Response at 3-4;
9 DNC/OVF Response at 2-3. We have no information suggesting otherwise. Thus, neither the
10 OVF nor DNC nor OFA "knowingly" accepted a prohibited contribution in violation of 2 U.S.C.
11 § 441b through the use of the customer list.

12 Assuming that the valuation for the space is correct, OVF does not appear to have
13 accepted a prohibited contribution by renting VIDA's space because OVF paid for the space
14 within a commercially reasonable time. With respect to the beverages, OVF appears to have
15 accepted a prohibited contribution given that OVF failed to make an advance payment to VIDA
16 for these expenses in violation 11 C.F.R. § 114.2(f). However, we recommend that the
17 Commission exercise its prosecutorial discretion and dismiss this allegation as to OVF, DNC,
18 and OFA, in light of the relatively small amount of money involved and OVF's ultimate payment
19 for the beverages. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

10044261346

1 **C. Alleged Failure to Disclose Transfer of Donor List**

2 1. **Facts**

3 The Association of Community Organizations for Reform Now or "ACORN" describes
4 itself as a "non-profit, non-partisan social justice organization."¹⁵ Project Vote describes itself as
5 a "national nonpartisan, nonprofit 501(c)(3)" organization and has partnered with ACORN, to
6 conduct voter registration drives.¹⁶ According to the complaint and publicly available
7 information, an ACORN whistleblower reportedly testified in a Pennsylvania court case that
8 OFA provided its donor lists to the Development Director of Project Vote.¹⁷

9 2. **Legal Analysis**

10 2 U.S.C. § 434(b)(4) requires a political committee to disclose its disbursements, and
11 11 C.F.R. § 104.3(b)(4)(vi) requires that an authorized committee must itemize a disbursement
12 of which the aggregate amount or value exceeds \$200. The Complaint alleges that OFA violated
13 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3 by failing to disclose the transfer of its donor list to
14 Project Vote. See Complaint at 2. The Complaint claims that according to past advisory
15 opinions, the Commission has determined that donor or mailing lists have value, and therefore
16 OFA should have disclosed the transfer of the donor lists as a disbursement pursuant to § 434(b).
17 See, e.g., AO 2002-14 (Libertarian National Committee) (rental payments from leased mailing
18 lists are reportable).¹⁸

¹⁵ See ACORN Website, <http://www.acorn.org/index.php?id=12342>.

¹⁶ See Project Vote Website, <http://www.projectvote.org/our-mission.html>.

¹⁷ See Complaint at 2 (citing *Moyer v. Cortez*, Commonwealth Court of Pennsylvania (Civ. No. 497 MD 2008) (filed Oct. 17, 2008); John Fund, *An ACORN Whistleblower Testifies in Court*, WALL ST. J., Oct. 30, 2008 (describing testimony of former employee of ACORN stating that a Project Vote development director told her that Project Vote had obtained donor lists from the Obama campaign).

¹⁸ MUR 5396 (Bauer for President 2000), Conciliation Agreement (determining that donor list had value and finding that respondent received an excessive in-kind contribution in the form of a donor list at less than the usual and normal charge).

10044261347

1 OFA's Response states that it "never gave its donor lists to Project Vote, ACORN, or any
2 other organization." OFA Response at 1. The Response notes that while its Privacy Policy may
3 permit it to transfer its donor lists to other organizations for a fee pursuant to a rental agreement,
4 OFA never gave or rented its list to Project Vote. In addition, the Response attaches the
5 Declaration of Michael Dykes, the former Finance Chief of Staff for OFA. The Declaration
6 states that OFA "never gave its donor lists to Project Vote, ACORN, or any other organization"
7 and "whenever [OFA] did transfer its donor lists to other organizations, it did so for a fee
8 pursuant to a rental agreement and reported the transactions accordingly." Declaration of
9 Michael Dykes, Exhibit A of OFA Response. Because the Committee did not transfer the lists to
10 Project Vote, the Response claims that there was no transaction to disclose and no violation of
11 the FECA. OFA Response at 2.

12 Recently, this allegation has received increased media attention amid claims that the *New*
13 *York Times* refused to cover a story that the Obama campaign had given ACORN a list of "so-
14 called maxed-out donors."¹⁹ While a former ACORN employee gave a *New York Times* reporter
15 a donor list, the reporter was unable to verify that the list came from the Obama campaign and
16 ultimately did not pursue the story.²⁰ However, this former ACORN employee, who may be the
17 ACORN whistleblower referenced in the Complaint, has subsequently made public statements
18 that the Obama campaign gave a donor list to ACORN.²¹

19 Although there appears to be some speculation in the press that the Obama campaign
20 gave a donor list to ACORN, the Response has flatly denied that OFA gave any donor list for

¹⁹ Clark Hoyt, *The Tip That Didn't Pan Out*, THE NEW YORK TIMES, May 17, 2009.

²⁰ *Id.*

²¹ See *O'Reilly Nails New York Times Over Obama-ACORN Lie*, May 19, 2009, available at <http://www.foxnews.com/story/0,2933,520701,00.html>.

10044261348

1 free to any outside organization, including ACORN, and no specific information has been
2 presented to the contrary. Given that the Response appears to adequately rebut the allegations,
3 we recommend that the Commission find no reason to believe that OFA violated 2 U.S.C.
4 § 434(b) and 11 C.F.R. § 104.3.

5 **D. Alleged Excessive Contributions**

6 1. **Facts**

7 Saul Ewing, LLP, ("Saul Ewing") is a law firm organized as a Delaware limited liability
8 partnership.²² It has offices throughout the Mid-Atlantic region of the United States. On
9 October 28, 2008, an article published in the *New York Times* reported that thousands of lawyers
10 were assisting President Barack Obama's campaign by monitoring the polls on Election Day.²³
11 The article described how Saul Ewing allowed attorneys employed by the firm to receive pro
12 bono credit for voter protection work and quoted a Saul Ewing partner, Orlan Johnson, who
13 stated, "Our lawyers are willing to go mano-a-mano."²⁴ The article then identified Mr. Johnson
14 as "a member of the Obama national finance committee," and in the immediately following
15 sentence, stated, "All volunteers must undergo a training session either in person or online with
16 the Obama campaign."²⁵

17 2. **Legal Analysis**

18 During the 2008 general election, no person could make a contribution, which exceeded
19 \$2,300, to any federal candidate and his authorized committee. 2 U.S.C. § 441(a)(1)(A); 11
20 C.F.R. § 110.1(b). 2 U.S.C. § 431(11) defines "person" to include a partnership. *Id.* Under
21 Commission regulations, a contribution by a partnership must be attributed to the partnership and

²² See Saul Ewing Website, http://www.saul.com/about_us/aboutus.aspx.

²³ See Leslie Wayne, *Party Lawyers Ready to Keep an Eye on the Polls*, NEW YORK TIMES, Oct. 28, 2008.

²⁴ *Id.*

²⁵ *Id.*

10044261349

1 to each partner either in direct proportion to his or her share of the partnership profits or by
2 agreement of the partners. 11 C.F.R. § 110.1(e)(1), (2). Because Saul Ewing is a partnership, it
3 was subject to the Act's contribution limits.

4 Citing the October 28, 2008 *New York Times* article, the Complaint alleges that OFA
5 intended to knowingly accept, and Saul Ewing, LLP intended to make, excessive contributions
6 through pro bono legal services rendered by Saul Ewing to OFA in violation of 2 U.S.C. § 441a.
7 Barring some exceptions, the provision of free legal services to a political committee becomes a
8 contribution under 2 U.S.C. § 431(8)(A)(ii), which states that a contribution includes, "the
9 payment by any person of compensation for the personal services of another person which are
10 rendered to a political committee without charge for any purpose." *Id.*; see also 11 C.F.R.
11 § 100.54; AO 2006-22 (Jenkins & Gilchrist) (law firm's preparation of amicus brief on behalf of
12 political committee free of charge would constitute a contribution). Thus, if Saul Ewing did
13 provide pro bono legal services to OFA, it would have made a contribution to OFA.

14 OFA and Saul Ewing both contend, however, that Saul Ewing never provided pro bono
15 services to OFA. See OFA Response at 2-3; Saul Ewing Response at 2. OFA states that it has
16 no knowledge of Saul Ewing providing any pro bono legal services to OFA. OFA Response at
17 2-3. In addition, Saul Ewing indicates that the article did not accurately report the voter
18 protection activities of its lawyers. *Id.* Although some of its attorneys participated in such
19 activities for pro bono credit, the attorneys participated in a nonpartisan voter protection effort
20 led by the Lawyers' Committee for Civil Rights Under Law, not the Obama campaign. Saul
21 Ewing Response at 2. According to Saul Ewing, while the *New York Times* reporter did speak
22 with Mr. Johnson, Mr. Johnson believed that her questions concerned his personal role in the
23 Obama campaign and not the law firm. See *id.* at 2.

1 Given the specific information provided by OFA and Saul Ewing, we believe that the
2 Responses adequately rebut the allegations contained in the Complaint. Accordingly, we
3 recommend that the Commission find no reason to believe that OFA knowingly accepted, and
4 Saul Ewing made, excessive in-kind contributions in violation of 2 U.S.C. § 441a(a) and (f).

5 **E. Conclusion**

6 In conclusion, we make the following recommendations concerning the several
7 allegations made by the Complaint. First, we recommend that the Commission dismiss the
8 allegation that OFA and President Obama violated 2 U.S.C. § 439a(b) by converting campaign
9 funds for President Obama's personal use and send a cautionary letter.

10 Second, we recommend that the Commission find reason to believe that VIDA and David
11 von Storch, President of VIDA, violated 2 U.S.C. § 441b and 11 C.F.R. § 114.2 by soliciting
12 outside of the restricted class and facilitating the making of contributions when Mr. von Storch
13 emailed an invitation to the OVF fundraiser to VIDA's customers and failed to obtain advance
14 payment for beverages. However, we do not recommend that the Commission should find
15 reason to believe that VIDA facilitated the making of contributions when it rented out its space
16 for the fundraiser. Furthermore, we recommend that the Commission dismiss the allegation that
17 OVF, OFA, and the DNC violated 2 U.S.C. § 441b(a) by knowingly accepting a prohibited
18 contribution.

19 In addition, we recommend that the Commission find no reason to believe OFA violated
20 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3 by failing to report an alleged transfer of a donor list.
21 Finally, we recommend that the Commission find no reason to believe that OFA knowingly
22 accepted, or Saul Ewing made, an excessive contribution in violation of 2 U.S.C. § 441a.

10044261351

**MUR 6127 (Obama for America et al.)
First General Counsel's Report**

10044261352

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

10044261353

1
2
3
4
5
6
7
8
9
10
11
12
13
14

15 **IV. RECOMMENDATIONS**

- 16 1. **Dismiss the allegation that Obama for America and Martin Nesbitt, in his official**
17 **capacity as Treasurer, violated 2 U.S.C. § 439a(b) and send a cautionary letter;**

²⁶ Given that tickets to the fundraiser generally cost between \$250 to \$2,500, with a limited number of tickets selling for \$100, we determined that the fundraiser likely raised at least \$100,000 assuming that 400 people attended and bought tickets that averaged approximately \$250.

10044261354

- 1 2. Dismiss the allegation that Barack Obama violated 2 U.S.C. § 439a(b) and send a
- 2 cautionary letter;

- 3 3. Find reason to believe that VIDA Fitness and David von Storch violated 2 U.S.C.
- 4 § 441b(a) and 11 C.F.R. § 114.2(f);

- 5 4. Dismiss the allegation that Obama Victory Fund, Obama for America, and the
- 6 Democratic National Committee violated 2 U.S.C. § 441b(a);

- 7 5. Find no reason to believe that Obama for America and Martin Nesbitt, in his official
- 8 capacity as Treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3;

- 9 6. Find no reason to believe that Obama for America and Martin Nesbitt, in his official
- 10 capacity as Treasurer, violated 2 U.S.C. § 441a(f);

- 11 7. Find no reason to believe that Saul Ewing, LLP violated 2 U.S.C. § 441a(a)(1)(A) and 11
- 12 C.F.R. § 110.1(b);

- 13 8. _____
- 14

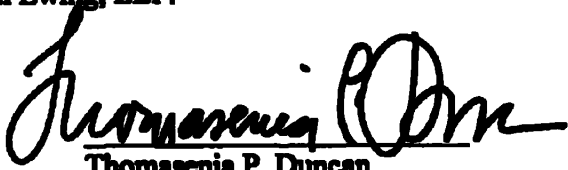
- 15 9. _____


- 16 10. Approve the attached factual and legal analyses;


- 17 11. Approve the appropriate letters; and


- 18 12. Close the file as to Obama for America and Martin Nesbitt, in his official capacity as
- 19 Treasurer; Barack Obama; Obama Victory Fund and Andrew Tobias, in his official
- 20 capacity as Treasurer; Democratic National Committee and Andrew Tobias, in his
- 21 official capacity as Treasurer; and Saul Ewing, LLP.

22
23
24 June 18, 2009
25 Date


Thomasenia P. Duncan
General Counsel


Ann Marie Terzaken
Associate General Counsel for Enforcement


Julie Kara McConnell
Assistant General Counsel



Jin Lee
Attorney

1
2
3
4
5
6
7
8
9
10
11
12

Attachments

A. Travelocity Search Results

B. April 6, 2009 Letter from Katherine R. Boyce, Esq.

10044261355

10044261356

Viewing: Custom Search Results

Search Flights Top Deals Web Fares Low Fare Alert Last Minute Packages RSS

Your Flight to Honolulu, HI (HNL)

Departing: Thu, Apr 30, 2020

2020.04.30

Your Search
Japan
Low \$1,277

hawaii.com

*Fare includes fuel, taxes, fees. Add-on for your hotel. Restrictions are not included and may apply.

	Search 1	Search 2	Search 3	Search 4
1-	\$1,277	\$1,277	\$1,277	\$1,277
Stops	1-1-0*	1-1-1**	1-1-1**	1-1-1**
Only	\$1,277	\$1,277	\$1,277	\$1,277
10 legs	Total \$1,277	Total \$1,277	Total \$1,277	Total \$1,277

All 10 Sales Departing Flight for Thu, Apr 30

10 flight options: 1 - 10

Direct 1 stop 2 stops 3 stops 4 stops 5 stops



Carrier Air Lines	Class	Stops	1070 - 1070	\$1,277	FARE CLASS
Flight 1070 operated by Hawaiian	Intermediate, 1070	Honolulu, HI (HNL)	Change plane to Hawaiian, 1070	per person	No Booking Fee
Amount of 1070 operated by Hawaiian			1070 - 1070	Total \$1,277	

http://www.hawaii.com/flights/search.do?SID=12489498271322220 (1 of 1) (04/29/2020 10:44:18 PM)

10044261357

Travelocity Getaway Search Results

View	View	View	View	View	View	
Details	Map	Itinerary	Prices	Reviews	Book Now	
	Delta Air Lines	7:18am	3:00pm	1 Stop 40min - 1 Stop Change planes in Minneapolis, MN (MSP) Flight 00020 gate: 00 W	\$1,248 per person Total \$1,297	FIRST CLASS No Booking Fees
Pages 1000 operated by Travelocity Atlanta 7:00am operated by Travelocity						
	Delta Air Lines	7:00am	1:00pm	1 Stop 30min - 1 Stop Change planes in Atlanta, GA (ATL) Flight 0177W gate: 7W W	\$1,248 per person Total \$1,297	FIRST CLASS No Booking Fees
Pages 1017 2 Pages 1000 operated by Travelocity						
	Delta Air Lines	9:00am	5:00pm	1 Stop 40min - 2 Stops Change planes in Minneapolis, MN (MSP) Stop in San Francisco, CA (SFO) Flight 0000 gate: 00 W	\$1,248 per person Total \$1,299	FIRST CLASS No Booking Fees
Pages 1001 operated by Travelocity Atlanta 7:00am operated by Travelocity						
	Delta Air Lines	7:18am	3:00pm	1 Stop 40min - 2 Stops Change planes in Minneapolis, MN (MSP) Stop in Portland, OR (PDX) Flight 0002 gate: 00 W	\$1,248 per person Total \$1,299	FIRST CLASS No Booking Fees
Pages 1002 operated by Travelocity Atlanta 7:00am operated by Travelocity						
	Delta Air Lines	7:18am	3:00pm	1 Stop 30min - 2 Stops Change planes in Minneapolis, MN (MSP) Stop in San Francisco, CA (SFO) Flight 0002 gate: 00 W	\$1,248 per person Total \$1,299	FIRST CLASS No Booking Fees
Pages 1003 operated by Travelocity Atlanta 7:00am operated by Travelocity						

ATTACHMENT A
Page 2 of 5

10044261358

Travelocity: Outbound Search Results

View Details	View Details	View Details	View Details	View Details	View Details
<p>Delta Air Lines</p> <p>Flight 2000 operated by Northwest Depart: 11:00am Arrive: 2:00pm</p>	<p>Delta Air Lines</p> <p>Flight 2000 operated by Northwest Depart: 11:00am Arrive: 2:00pm</p>	<p>Delta Air Lines</p> <p>Flight 2000 operated by Northwest Depart: 11:00am Arrive: 2:00pm</p>	<p>Delta Air Lines - 1 Stop</p> <p>Change planes in Minneapolis, MN (MSP) Stop in Seattle/Tacoma, WA (SEA) Flight 2000 continues the date available</p>	<p>\$1,248</p> <p>per person</p> <p>Total \$1,248</p> <p>2 weeks left</p>	<p>FIRST CLASS</p> <p>No Booking Fees</p>
<p>US Airways</p> <p>Flight 500 / 50</p>	<p>US Airways</p> <p>Flight 500 / 50</p>	<p>US Airways</p> <p>Flight 500 / 50</p>	<p>US Airways - 1 Stop</p> <p>Change planes in Phoenix, AZ (PHX) Flight 500 continues 00 %</p>	<p>\$1,288</p> <p>per person</p> <p>Total \$1,288</p>	<p>FIRST CLASS</p> <p>No Booking Fees</p>
<p>US Airways</p> <p>Flight 500 / 100 / Flight 5000 operated by Hawaiian Airlines</p>	<p>US Airways</p> <p>Flight 500 / 100 / Flight 5000 operated by Hawaiian Airlines</p>	<p>US Airways</p> <p>Flight 500 / 100 / Flight 5000 operated by Hawaiian Airlines</p>	<p>US Airways - 1 Stop</p> <p>Change planes in Phoenix, AZ (PHX) Change planes in Lihoe, HI (LIH) Flight 5000 continues 00 %</p>	<p>\$1,288</p> <p>per person</p> <p>Total \$1,288</p> <p>3 weeks left</p>	<p>FIRST CLASS</p> <p>No Booking Fees</p>
<p>US Airways</p> <p>Flight 500 / 40 / Flight 5000 operated by Hawaiian Airlines</p>	<p>US Airways</p> <p>Flight 500 / 40 / Flight 5000 operated by Hawaiian Airlines</p>	<p>US Airways</p> <p>Flight 500 / 40 / Flight 5000 operated by Hawaiian Airlines</p>	<p>US Airways - 1 Stop</p> <p>Change planes in Phoenix, AZ (PHX) Change planes in Lihoe, HI (LIH) Flight 5000 continues 00 %</p>	<p>\$1,288</p> <p>per person</p> <p>Total \$1,288</p>	<p>FIRST CLASS</p> <p>No Booking Fees</p>
<p>American Airlines</p> <p>Flight 1000 / 100</p>	<p>American Airlines</p> <p>Flight 1000 / 100</p>	<p>American Airlines</p> <p>Flight 1000 / 100</p>	<p>American Airlines - 1 Stop</p> <p>Change planes in Dallas/Fort Worth, TX (DFW) Flight 1000 continues the date available</p>	<p>\$1,338</p> <p>per person</p> <p>Total \$1,338</p>	<p>FIRST CLASS</p> <p>No Booking Fees</p>

ATTACHMENT A
Page 3 of 5

10044261359

Travelocity Outbound Search Results

Carrier	Class	Origin	Destination	Flight Details	Fare	Class	Notes
American Airlines	Business	Indianapolis, IN (IND)	Roanoke, VA (ROA)	1 Stop 40min - 1 Stop Change planes in Charlotte, NC (CLT)	\$1,338	FIRST CLASS	No Booking Fees
				Flight 0100 available No date available	per person		Total \$1,338
View Dates							
United	Business	Indianapolis, IN (IND)	Roanoke, VA (ROA)	1 Stop 40min - 1 Stop Change planes in Chicago, IL (MDW)	\$1,338	FIRST CLASS	No Booking Fees
				Flight 0100 available 10%	per person		Total \$1,338
View Dates							
United	Business	Indianapolis, IN (IND)	Roanoke, VA (ROA)	1 Stop 40min - 1 Stop Change planes in Chicago, IL (MDW)	\$1,338	FIRST CLASS	No Booking Fees
				Flight 0100 available 10%	per person		Total \$1,338
View Dates							
United	Business	Indianapolis, IN (IND)	Roanoke, VA (ROA)	1 Stop 40min - 1 Stop Change planes in Denver, CO (DEN)	\$1,338	FIRST CLASS	No Booking Fees
				Flight 0100 available 10%	per person		Total \$1,338
View Dates							
United	Business	Indianapolis, IN (IND)	Roanoke, VA (ROA)	1 Stop 40min - 1 Stop Change planes in Chicago, IL (MDW)	\$1,338	FIRST CLASS	No Booking Fees
				Flight 0100 available 10%	per person		Total \$1,338

PATTON BOGGS LLP
ATTORNEYS AT LAW

7550 M Street, NW
Washington, DC 20037-1328
202-457-8800
Facsimile 202-457-8315
www.pattonboggs.com

April 6, 2009

Katharine R. Boyce
|
|@pattonboggs.com

Ann Marie Terzaken, Esq.
Associate General Counsel for Enforcement
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MURs 6110 and 6127

Dear Ms. Terzaken:

As designated counsel to David von Storch, President of VIDA Fitness, I am responding to your letter of March 27, 2009 regarding Matters Under Review ("MUR") 6110 and 6127 requesting clarification of one point in our Response of December 23, 2008 provided to the Commission.

As noted in our Response and Mr. von Storch's affidavit attached thereto, the space at VIDA Fitness, 1515 15th Street, NW, Washington, DC, had not yet opened to the public and therefore had no history of customary usage. Therefore, as Mr. von Storch had no experience estimating what would be a fair market value for renting this particular space, he estimated an amount that he thought would be a reasonable fair market value of the space rental. He then discussed this price with the event organizer at the Democratic National Committee ("DNC") who had asked to be invoiced. Mr. von Storch was told that, based on the DNC's extensive experience with costs of hotel venue rentals with beverages included (only sodas and beer from one keg were served), the price quoted in the invoice seemed reasonable. We believe that the DNC's in-house counsel will concur with this clarification.

For the reasons set forth in our Response, as clarified in this letter, we believe that the allegations made against Mr. von Storch or against VIDA Fitness or Bang Salon Spa regarding prohibited corporate in-kind contributions and failure to include proper joint fundraising notices are without merit, and that no action should be taken against Mr. von Storch or his businesses.

Sincerely,

Katharine R. Boyce

Katharine R. Boyce
Counsel to David von Storch

cc: David von Storch

ATTACHMENT B
Page 1 of 1

10044261361